IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.472 OF 2006

JCL International Limited
206, South Ex Plaza-I,
389 Masjid Moth,
South Extn. Part-II
New Delhi – 110 049. .... Petitioner.

Versus

M/s. S. S. Fabs Goa,
A registered partnership firm
Having its office and principal place
Of business at Plot no.290,
Kundaim Industrial Estate,
Ponda, Goa. .... Respondent.

Mr. F.M. Reis , Advocate with Mr. C.S. Silva, Advocate for the petitioner.

Mr. R.G. Ramani, Advocate for the respondent .

Coram:- J.N. PATEL, J.

Date:- 29th November, 2006.

ORAL JUDGMENT:

Rule returnable forthwith.

2. Heard the learned Counsel for the parties.

3. The petitioner (original defendant) has impugned the order dated 21.3.2006 passed by the learned Civil Judge Senior Division, Ponda in Special Civil Suit No.2/2004/A on the application moved by the petitioner under Order XIV Rule 2(a) to frame a preliminary issue as regards the territorial jurisdiction of the Court to entertain the suit.

4. This application was contested by the respondent (original plaintiff), and the Court rejected the application by passing the impugned order.

5. The learned Counsel for the petitioner (original defendant) submits that the Trial Court rather than framing a preliminary issue and giving an opportunity to the parties, dismissed the application on coming to a prima facie conclusion that the Court has jurisdiction by observing that the application made by the defendant raising a preliminary issue has no merits in reference to clause [c] of section 20 of Civil Procedure Code.

6. In so far as the other objection raised by the defendant as to maintainability of the suit on the ground of non disclosure of the names of the partner are concerned, the Court has rejected the same which in the opinion of the Court has been rightly rejected. In so far as prayer of the petitioner (original defendant) for framing the issue of territorial jurisdiction as a preliminary issue, the Trial Court has erred in rejecting the same.

7. The learned Counsel for the petitioner (original defendant) submitted that the pleadings made in the plaint and the documents annexed by the respondent (original plaintiff) in support of his case, itself goes to show that the Trial Court has no jurisdiction to decide the suit and therefore ought to have framed a preliminary issue. The petitioner (original defendant) moved the Court in the matter, and has placed reliance in the decision of Supreme Court in ***Arun Agarwal v. Nagreeka Exports (P) Ltd. And another (2002) 10 Supreme Court Cases 101.***

8. It is contended that the Trial Court rather than rejecting or allowing the application to frame issue of territorial jurisdiction as a preliminary issue has proceeded to examine the same on merits and has even recorded its findings to the effect that the Court has jurisdiction, though the said finding according to the impugned order was a prima facie conclusion arrived at by the Trial Court. But it shows non application of mind in disposing of the application and therefore the impugned order deserves to be quash and set aside. This Court should direct the Trial Court to take up the issue of territorial jurisdiction as a preliminary issue before proceeding with the suit on merits.

9. The learned Counsel appearing for the respondent (original plaintiff) submitted that the observations made by the Trial Court while dismissing the application filed by the petitioner (original defendant) has observed in the impugned order itself, are prima facie in nature and has been recorded as reasons for rejecting the application and cannot be construed as a finding by the Trial Court that it has territorial jurisdiction to decide the suit. It is further contended that it is evident from the fact that the Trial Court while framing the issues has also taken into consideration the plea taken by the petitioner (original defendant) that it has no territorial jurisdiction to try the suit and it is also one of the issue before the Trial Court which requires to be decided. It is further contended by the learned Counsel for the respondent (original plaintiff) that rather than deciding the issue of territorial jurisdiction as a preliminary issue, it will be in the interest of justice that all the issues are taken up by Trial Court and the suit is disposed of, and in case the Trial Court comes to the

conclusion that it has no territorial jurisdiction, it can pass appropriate orders and therefore the impugned order does not call for any interference.

10. Order XIV Rule 2(a) and (b) reads as under:-

> **"Court to pronounce judgment on all issues**:-
>
> [1] Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.
>
> [2] Where issues both of law and fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to -
>
> (a) the jurisdiction of the Court , or
>
> (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.**"**

A plain reading of Order XIV Rule 2 (a), itself makes it clear i.e. the Court is of the opinion that the case or any part thereof, may be disposed of on an issue of law and it may try that issue first if that issue relates to the jurisdiction of the Court, and it is a well settled law that issue regarding territorial jurisdiction of the Court ought to be tried as a preliminary issue as it goes to the root of the matter. From the impugned order, what this Court finds is that the

Trial Court has rejected the application not on the ground that a preliminary issue raised by the petitioner (original defendant) regarding territorial jurisdiction of the Court is an issue both of law and of facts and requires to be decided after giving due opportunity to the parties to lead evidence. On the other hand it has totally ignored the provision of Rule 2, Order XIV and rather than deciding the application of the petitioner as to whether the issue regarding the territorial jurisdiction of the Court is required to be decided as a preliminary issue or not has proceeded to reject the application on the basis of the findings which could have been only recorded after hearing the parties on merits as to the issue of territorial jurisdiction. The petitioner (original defendant) has in his application merely pleaded that the preliminary issue be framed regarding territorial jurisdiction of the Court and under these circumstances, if the Trial Court was of the opinion that such an issue cannot be decided as a preliminary issue as it was a mixed question of law and fact, it could have very well rejected the application.

11. In ***Arun Agarwal's*** case (Supra), the Hon'ble Supreme Court has observed "We are of the view that the question regarding jurisdiction of the Court was required to be decided as a preliminary issue which requires the Court to consider the pleadings of the parties". In the present case, the written statement filed by the defendant for issue of territorial jurisdiction is pleaded as a preliminary point and therefore the Court ought to have decided the application in that context so far as the issue of territorial jurisdiction was concerned whether to be decided as a preliminary issue or not.

12. Therefore the impugned order is quashed and set aside. The Trial Court is directed to hear the parties afresh on the application filed by the petitioner (original defendant) to frame the issue of territorial jurisdiction as a preliminary issue and pass appropriate orders in accordance with law rather than proceeding with the case on merits.

13. In case, the Court comes to the conclusion that the issue of territorial jurisdiction is required to be decided as a preliminary issue, it will forthwith hear the parties on the said preliminary issue and after decision of the preliminary issue proceed to deal with the case. Needless to say that in case the Court comes to the conclusion that it has no territorial jurisdiction, it may either return the plaint for presentation to the proper Court or dismiss the suit for want of jurisdiction.

14. Rule is made absolute in the aforesaid terms with no order as to costs.

J.N. PATEL, J.

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